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SUPREME COURT, U.S.

IN THE  
SUPREME COURT OF THE UNITED STATES

TERM, 1976

NO. 75-6819

McKINLEY WILLIAMS

V.

STATE OF NORTH CAROLINA

PETITION FOR A WRIT OF CERTIORARI  
TO THE SUPREME COURT OF NORTH CAROLINA

*W. Lunsford Crew*  
W. LUNSFORD CREW  
100 BECKER DRIVE  
ROANOKE RAPIDS, NORTH CAROLINA 27870  
TELEPHONE: (919) 537-3508  
ATTORNEY FOR PETITIONER

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v.

STATE OF NORTH CAROLINA

PETITION FOR A WRIT OF CERTIORARI TO  
THE SUPREME COURT OF NORTH CAROLINA

The Attorney for the Petitioner prays that a Writ of Certiorari issue to review the order of the Supreme Court of North Carolina entered on March 2, 1976.

## OPINION BELOW

The opinion of the Supreme Court of North Carolina is reported at \_\_\_\_\_ N. C. \_\_\_\_\_, 222 S. E. 2d 242 (1976) and is set out in Appendix A hereto, pp. \_\_\_\_\_, *infra*.

## JURISDICTION

The opinion of the Supreme Court of North Carolina was entered on March 2, 1976. This Petition for Certiorari was filed within 90 days of that date. The jurisdiction of this Court is involved under 28 U. S. C., §1257 (3).

### QUESTIONS PRESENTED

1. Does the imposition of the death penalty constitute cruel or unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution?

### CONSTITUTIONAL AND STATUTORY

#### PROVISIONS INVOLVED

1. This case involves the Eighth and Fourteenth Amendments to the Constitution of the United States.
2. This case also involves the following provisions of the General Statutes of North Carolina:

§ 14-17. Murder in the first and second degree defined; punishment. - A murder which shall be perpetrated by means of poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate and premeditated killing, or which shall be committed in the perpetration or attempt to perpetrate any arson, rape, robbery, kidnapping, burglary or other felony, shall be deemed to be murder in the first degree and shall be punished with death. All other kinds of murder shall be deemed murder in the second degree, and shall be punished by imprisonment for a term of not less than two years nor more than life imprisonment in the State's prison.

§ 15-187. Death by administration of lethal gas. - Death by electrocution under sentence of law is hereby abolished and death by the administration of lethal gas substituted therefor.

§ 15-188. Manner and place of execution. The mode of executing a death sentence must in every case be by causing the convict or felon to inhale lethal gas of sufficient quantity to cause death, and the administration of such lethal gas must be continued until such convict or felon is dead; and when any person, convict or felon shall be sentenced by any court of the State having competent jurisdiction to be so executed, such punishment shall only be inflicted within a permanent death chamber which the superintendent of the State penitentiary is hereby authorized and directed to provide within the walls of the North Carolina penitentiary at Raleigh, North Carolina. The superintendent of the State penitentiary shall also cause to be provided, in conformity with this article and approved by the Governor and Council of State, the necessary appliances for the infliction of the punishment of death in accordance with the requirements of this article.

#### STATEMENT OF THE CASE

McKinley Williams was charged in a bill of indictment on the 23rd of April, 1975 with the first degree murder of George Herbert Johnson, II in Halifax County, North Carolina, under North Carolina General Statutes Section 14-17.

The Petitioner entered a plea of not guilty and testified in his own behalf. The jury returned a verdict of guilty of murder in the first degree as charged in the indictment and the Trial Judge imposed the death penalty upon the Petitioner, to which the Petitioner entered objections based on the death penalty's being a cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution. The trial court overruled this objection.

The Petitioner gave notice of appeal in open court after the Trial Judge imposed the death penalty, which appeal was perfected to the Supreme Court of North Carolina. On March 2, 1976 the Supreme Court of North Carolina affirmed the conviction of the Petitioner and found no error in the trial. The attorney for the undersigned Petitioner filed a request for a stay of execution with the Supreme Court of North Carolina on March 17, 1976, which was granted by the Supreme Court of North Carolina upon the condition that a petition for a Writ of Certiorari be filed in this cause with the United States Supreme Court.

#### REASONS FOR GRANTING THE WRIT

1.  
THE COURT SHOULD GRANT CERTIORARI BECAUSE THIS CASE PRESENTS THE FUNDAMENTAL QUESTION AS TO WHETHER THE IMPOSITION OF THE DEATH PENALTY UNDER A STATE STATUTE IS A VIOLATION OF THE UNITED STATES CONSTITUTION AS BEING A CRUEL OR UNUSUAL PUNISHMENT WHICH IS SPECIFICALLY PREVENTED BY THE EIGHTH AND FOURTEENTH AMENDMENTS.

The Petitioner submits that this Court should grant Certiorari in this case to consider directly the constitutionality of the death penalty. To take the life of an individual as punishment for an act declared by law to be a crime is to compound the tragedy of the event. The death penalty is an end to all hope for the condemned for their rehabilitation. The rehabilitation of criminal offenders has historically been a goal of our nation and individual states.

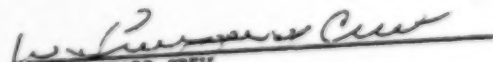
The death penalty is not the most effective means for deterrents of crime. This can be readily ascertained by the fact that in the State of North Carolina alone there are one hundred three prisoners who have received sentences of death as of 20 January, 1976. Their numbers continue to grow.

The last execution carried out under a judgment imposing the death penalty in North Carolina was in 1962. Since then, public opinion against the death penalty has increased to the point that the question of whether that penalty is a violation of the United States Constitution must be decided. This petition presents that opportunity.

CONCLUSION

For the foregoing reason, this Court is respectfully requested to grant this Petition for Writ of Certiorari.

RESPECTFULLY SUBMITTED,

  
W. LUNSFORD CREW  
100 BECKER DRIVE  
ROANOKE RAPIDS, NORTH CAROLINA 27870  
TELEPHONE: (919) 537-3508  
ATTORNEY FOR PETITIONER WILLIAMS

IN THE  
SUPREME COURT OF THE UNITED STATES  
October Term, 1976

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McKINLEY WILLIAMS,  
Petitioner

vs.

STATE OF NORTH CAROLINA,  
Respondent

ON WRIT OF CERTIORARI  
TO THE  
SUPREME COURT OF NORTH CAROLINA

MEM RESPONSE OF RESPONDENT  
STATE OF NORTH CAROLINA  
TO PETITION FOR WRIT OF CERTIORARI

CITATION TO OPINION BELOW

The opinion of the Supreme Court of North Carolina is reported at 289 NC 439, 222 SE 2d 242 (1976), and is appended to petitioner's Petition as Appendix A.

JURISDICTION

Petitioner seeks to invoke the jurisdiction of this Court pursuant to 28 USC Sec. 1257 (3).

QUESTION PRESENTED

WHETHER THE IMPOSITION AND IMPLEMENTATION OF THE SENTENCE OF DEATH FOR THE OFFENSE OF MURDER IN THE FIRST DEGREE AS REQUIRED UNDER NORTH CAROLINA LAW CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT.

CONSTITUTIONAL AND STATUTORY  
PROVISIONS INVOLVED

1. This appeal presents for construction the Eighth and Fourteenth Amendments to the Constitution of the United States.
2. Additionally, this appeal involves NC Gen. Stats. 14-17, 15-187, and 15-188 as cited by defendant-petitioner in his Petition for Writ of Certiorari.

STATEMENT OF FACTS

The State-respondent adopts as its own as if fully set out herein the facts as recited by the North Carolina Supreme Court at pages 243-244, (Southeastern Reporter) of its Opinion in State v. Williams 289 NC 439, 222 SE 2d 242 a copy of which is attached to petitioner's petition as Appendix A.

ARGUMENT

The State of North Carolina concedes that petitioner's sole question upon this appeal is governed by Woodson and Waxton v. North Carolina, \_\_\_\_\_ U.S. \_\_\_\_\_ (1976). It cannot, therefore, oppose the Petition for Writ of Certiorari filed herein, and thus to the extent that the decision below of the North Carolina Supreme Court leaves undisturbed the death penalty imposed by the trial tribunal, the State respondent does not oppose a remanding of this case to the North Carolina Supreme Court for further proceedings not inconsistent with Woodson and Waxton, supra.

CONCLUSION

For the foregoing reasons, the State-Respondent does not oppose the granting of certiorari in order that sentencing may be imposed consistent with Woodson and Waxton, supra.

Respectfully submitted this the 9th day of July, 1976.

RUFUS L. EDMISTEN  
Attorney General

*George W. Boylan*  
George W. Boylan  
Assistant Attorney General

Counsel for the State of North Carolina,  
Respondent

Post Office Box 629  
Raleigh, North Carolina 27602  
Telephone: (919) 829-3252